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Human Trafficking in the MENA Region: Exploring Human Trafficking Laws in the MENA Region for the Protection of Ghanaian Victims

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Abstract

Trafficking of Ghanaian women to the Middle East and North Africa Region (MENA) for sexual exploitation has over the years been a worrying phenomenon for the governments of Ghana and States in the (MENA) region. This concern arose due to the high numbers of Ghanaian trafficked women in Kuwait, Saudi Arabia, Qatar in particular, and other countries in the MENA region. In response to this development, the government of Ghana made arrangements in 2018 to set up a diplomatic mission in Kuwait as a measure of checking the maltreatment of Ghanaians. The paper would under-take a critical analysis of counter-trafficking measures in the MENA region; experiences of Ghanaian victims of trafficking (GVoTs) and how GVoTs are protected by existing laws in the MENA region

Introduction

Trafficking of Ghanaian women to the Middle East and North Africa Region (MENA) for sexual exploitation has over the years been a worrying phenomenon for the governments of Ghana and States in the (MENA) region. This concern arose due to the high numbers of Ghanaian trafficked women in Kuwait, Saudi Arabia, Qatar in particular, and other countries in the MENA region. In response to this development,

the government of Ghana made arrangements in 2018 to set up a diplomatic mission in Kuwait as a measure of checking the maltreatment of Ghanaians. The paper would under-take a critical analysis of counter-trafficking measures in the MENA region; experiences of Ghanaian victims of trafficking (GVoTs)¹ and how GVoTs are protected by existing laws in the MENA region.

The experiences of Ghanaian victims of trafficking in these cities are diverse and complicated. Most of the women are undocumented, making them highly vulnerable to trafficking. This research found out that majority of sexually exploited undocumented victims of trafficking either apply for political asylum or get in to the MENA region through fraudulent travel recruitment agents who promised them non-existent jobs. Though there are existing laws and social protection programmes that address the issues of victims of trafficking, it does not deal comprehensively with their human security issues².

This paper is relevant to understanding human trafficking of migrants in the MENA region. It further seeks to assist governments in developing a mutually beneficial policy and legal framework that protects the rights of victims of trafficking especially, women and children.

Human Trafficking: The Case of Ghanaians in the MENA Region

Trafficking in persons has received increasing attention in recent years, both at the national and international level, including by the Human Rights Council. The international community recognized that trafficking in persons violates human rights

¹ GVoT (Ghanaian Victims of Trafficking).

² 1994 UNDP Human Development Definition.

and continues to pose a serious challenge to humanity. Although there have been works done in recent years both at the national and international level, trafficking in person still operates unabated. This according to the International Labour Organization (ILO) Report, “Profits and Poverty: The Economics of Forced Labour”, two thirds of the estimated total of US\$ 150 billion; US\$ 99 billion; came from commercial sexual exploitation, while another US\$ 51 billion resulted from forced economic exploitation, including domestic work, agriculture and other economic activities. Also, according to the UN’s International Organization for Migration, there have been approximately 600% increase in the number of potential sex trafficking victims arriving from Africa to the Gulf States.

Ghana is not isolated from the perils of human trafficking. Ghanaian women are incessantly trafficked for the purpose of forced labor and commercial sexual exploitation. For most of these women, cross border trafficking or illegal migrant smuggling is connected with fraudulent recruitment agencies, recruiting young females to the Gulf States, notably, Kuwait, Qatar and Saudi Arabia to do non-existent jobs. Fraudulent recruitment agencies have emerged in Ghana over the past years to exploit vulnerable Ghanaians who are desperate to seek greener pastures across the shores of Ghana.

The electronic and print media have been replete with stories of Ghanaian girls being trafficked to the Gulf States to work as housemaids. The stories are often that of abuse, injuries and sometimes death. The radio and television stations sometimes show some of these ladies narrating harrowing ordeals that they have suffered in mainly the following Middle Eastern States; Kuwait, Qatar and Saudi Arabia. According to the Daily Graphic on July 15, 2017, personnel of the Ghana Immigration Service (GIS) at

the Aflao border intercepted 150 young Ghanaian women who were being trafficked to the Gulf states through neighboring Togo to work as housekeepers. The victims aged between 18 and 28 were mostly students who had been lured by the traffickers and promised a better future in the Middle East. The International Organization for Migration (IOM) in 2016 raised concerns about increasing reports of Ghanaian female migrants being abused in the Middle East. The organization said 2,000 women departed from Ghana to work in the Middle East between September 2014 and January 2015 alone, but over 350 of them have returned from countries like Kuwait and Jordan with cases of inhumane working conditions, physical and emotional torture, as well as sexual exploitation. Also, the Minister for Gender, Children and Social Protection during her address at the 8th Annual Salon Academy of the National Association of Beauticians and Hairdressers in Accra spoke about how the Government of Ghana is disturbed by the increasing reports on Ghanaian women migrants being abused in the Gulf States and other countries.

State of Human Trafficking in the MENA Region

To clarify, the geographic region referred to in this paper, the Middle East, extends as far west as Mauritania, as far south as Sudan, as far east as Oman, and as far north as Syria. This region is also known as MENA (Middle East and North Africa), but will be referred to as the Middle East in this paper. Across the globe, data on human trafficking is scarce, due to its hidden nature. The middle East is no exception of this and the complexity of defining the geographical space of the region as well as inaccurate information make looking for facts and information on human trafficking in this region almost impossible. This is compounded because some Middle Eastern Laws and cultures do not recognize certain forms of human trafficking as being

trafficking. Consequently, some victims of trafficking are often not protected in the Middle East. Victims of human trafficking are often punished because they are viewed as illegal immigrants.

Trafficking of migrant workers is one of the major human trafficking problems in the Middle East. Many migrants, mainly from Sub-Saharan Africa and Asia are fraudulently led and deceived into coming to the Middle East; where they find themselves being coerced into forced labour or working for very low wages. This tragic phenomenon is particularly prevalent in Oil rich states like Kuwait, Oman, Qatar and the United Arab Emirates (UAE). Additionally, these workers may be held to pay off their debts which accumulates from high cost of travel and housing. Organizations like the International Labour Organization strongly warn migrating workers about fraudulent schemes that promise workers transportation and work into another state. Despite the high population of migrant workers in the Gulf States, it may be objectively stated that not all are victims of human trafficking. Though human trafficking for sexual exploitation is prevalent in the Middle East, it is difficult to find resources on this aspect of trafficking.

Prominent human trafficking researchers such as Mattar³, argues that in many Middle Eastern states, temporary marriage is permitted in which the woman has few rights and the husband decides when the marriage ends. Again, temporary marriage is thought to be a way to legalize prostitution. Additionally, Middle Eastern culture is sensitive to this issue, making researching and collection of information difficult.

³ Mattar, Mohamed. 2007. "Article 35 of the New Iraqi Constitution: Recognition of Trafficking in Women and Children as a Specific Crime." The Protection Project

Mattar⁴ also notes that Iraq's new constitution includes an article that prohibits the trafficking of women and children for sex trade, the first Arab state to do so. Some states and Civil Society Organizations are also pressuring Middle Eastern states to implement more explicit laws on human trafficking in general.

Nevertheless, in cases where laws are against sex trafficking, the laws are not respected or enforced. Slave redemption is a controversial issue in dealing with human trafficking in the Middle East. This is because it is difficult to set free or release trafficked persons from traffickers without violence or turmoil. Some organizations have resorted to buying slaves from their masters and this has resorted to a rise in demand for slaves. Release of slaves may therefore be a contributory factor to the increase in the demand for slaves. This is an incredibly difficult controversy because it weighs the lives of current victims of human trafficking with the hope that not feeding the demand will save people from becoming victims of trafficking in the near future.

Laws on the Status of Victims in the MENA Region

Globally, anti-trafficking laws around the world are silent as to the liability of purchaser of the services provided by victims of trafficking. There are few laws for prosecution of the client who buys sex from a trafficking victim. There are exceptions to this; and an example is the Swedish model where the buyer is deemed culpable per the Swedish anti-trafficking laws. In the Middle East, however, the Syrian law is the only Arab law that provides for the liability of purchasers, users or clients. In this regard, the law explicitly states that anyone who has knowledge of the act of trafficking and benefits materially or morally from the services provided by victim of trafficking shall be

⁴ Ibid see 3

subjected to imprisonment from six months to two years in addition to a fine. This is a laudable idea because discouraging demand by adopting appropriate legislative measures to prosecute user is an effective means of combating trafficking. Though this law is preventive, it is not sufficient. The protection of the victim is imperative per international protocols on the protection of human trafficking. However, generally, the model law of the Arab league is largely limited to criminalization and not protection.

The Challenge to Protect Victims of Trafficking.

The Model Law of the Arab league is limited to criminalization and does not cover protection, except in Article 12, which states that the competent authorities shall adopt measures to ensure protection of victims, to those who report the crimes stipulated in the law, and of those who are affected by these crimes, including witnesses, experts and members of their families. For instance, the Egyptian law uses the term "defendant" instead⁵. The U.A.E. law is totally silent as to the protection of victims⁶. Nonetheless, Article 14 of the Model Law to Combat Human Trafficking of the Gulf States Cooperation Council (GCC) provides for a number of protective measures to be taken during investigation or trial.

⁵ Law No. 64 of 2010 (Law Regarding Combating Human Trafficking), *Al-Jarida Al-Gasmiyya*, May 2010 (Egypt).

⁶ Law No. 51 of 9 Nov. 2006 (Combating Human Trafficking Crimes) (U.A.E.).

Aggravated Circumstances When the Trafficked Person Is a Female

The Arab League Model Law provides for enhanced penalties in aggravated circumstances⁷. There is a list of aggravated circumstances which is drawn from a variety of Arab anti-trafficking laws, this includes instances where the act of trafficking is committed by an organized criminal group; by the use of a weapon; committed by victim's spouse or one of her close relatives; is committed by the spouse of the victim or one of her close relatives; committed by more than a person on the victim or causes harm to be disabled⁸. However, there is no consensus as to whether the penalty should be enhanced when the victim is a female. There are some Arab human trafficking laws which state that a penalty may be enhanced if the crime is committed against a child, a woman or a person with special needs. For instance, Article 4 of the GCC Model Law enhances the penalty "if the crime is committed against women, children or persons of special needs. Again, Article 4 of the Saudi Arabian law enhances the penalty "if the crime is committed against a woman of special needs⁹ or if the crime is committed against a child, though the perpetrator is not aware the victim is a child¹⁰. Article 8 of the Syrian law provides that a penalty shall be enhanced "if the crime is

⁷

The following conditions are mentioned, among others, as leading to aggravated circumstances:

I) If the crime is committed against children, women, or persons with special needs;

⁸

See Law No. 1 of 2008 (Law with Respect to Trafficking in Persons), art. 4, (Bahr.); Law No. 64 of 2010, art. 6 (Egypt); Law of 3 Mar. 2009, art. 7 (Jordan); Royal Decree 126/2008 (Decree Promulgating the Law Combating Trafficking in Persons), 23 Nov. 2008, art. 9 (Oman); Royal Decree No. M/40 of 2009 (Law for Combating Crimes of Trafficking in Persons), *Um Al-Quaran*, 7 Aug. 2009, art. 4 (Saudi Arabia); Law No. 51 of 9 Nov. 2006 (Combating Human Trafficking Crimes), art. 2 (U.A.E.).

⁹ Royal Decree No. M/40 of 2009, art. 4(2) (Saudi Arabia).

¹⁰

Law No. 47/2007 (Regarding Access to Information) (Jordan). The law establishes

committed against women or children or person[s] with special needs¹¹. Article 4 of Bahrain's law states that aggravating circumstances in a crime of trafficking persons include the victim being "below fifteen years of age, a female or a person with special needs¹²." The law in Jordan states in Article 7(b)(2) that a penalty for the crime of human trafficking shall be enhanced "if the victim is a female, a minor, or a person with special disability¹³." Similarly, Article 15 of the Qatari law enhances the penalty "if the victim is a female, a child, a person with a disability, or incapacitated.

Dealing with the Demand for Sex Trafficking in the MENA Region

The incessant rise in victims of trafficking in the MENA region could be attributed to existing demand. Therefore, reducing demand will ultimately lead to the reduction in supply. If the attributes that are demanded by those that exploit trafficked people can be understood and countered, then demand might be lessened. There are several points about countering demand that arise from the discussion above. Firstly, at a basic level, is the need to counter the moral economy that allows those exploiting trafficked people to rationalize this activity. In part, this means raising public awareness of the crime of trafficking, and especially of the realities of the lived experience of trafficked people. As noted above, human rights are based on the privileging and then codification of the victim's definitions of an activity. Virtually every action that we now think of as a violation of human rights was once defined as acceptable.

¹¹ Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons), art. 8(l) (Syria).

¹² Law No. 1 of 2008, art. 4(2) (Bahr

¹³ Law of 3 Mar. 2009 (Combating Human Trafficking), art. 7(b)(2) (Jordan).

This process of recognizing the rights of the victims of trafficking is still in process. It is indicative of the fact that the rights of trafficking victims are not fully accepted to note that the crime itself is not yet codified in many countries, nor does the public tend to have a clear understanding of the crime, even where it has entered the criminal code.

The U.S. Trafficking Victims Protection Act (2000) has been hailed as breakthrough legislation precisely because, it specifically recognizes that trafficked people are victims of a crime, and that it sets their status as victims at a higher priority than their status, for example, as illegal aliens. The criminals using trafficked people may not themselves decide to extend to their victims the recognition of rights, but when the society in which they operate becomes aware of the crime and able to identify a trafficking victim as such, it increases the likelihood that crime will be reported, and the victim freed. This in turn increases the risk to the perpetrator and acts to reduce demand.

The Trafficking Victims Protection Act also dramatically increased the penalties for trafficking offences. This can be important in reducing demand, since demand is based on decisions that reflect the costs of acquiring a trafficked person. Many crimes defy an economic analysis: crimes of passion, in particular, are rarely the result of calculation of cost and benefit. Trafficking, however, is primarily an economic crime, and as such it should respond to changes in its cost/benefit structure. If the cost includes the potential of a high penalty in both economic and legal terms, demand will, at least, seek new lower risk “products”. High penalties and a high likelihood of apprehension might be the most effective way to reduce demand, if they are applied to all forms of trafficking and the exploitation of trafficked people. Noting that there is both a wholesale and retail market for trafficked people also suggests counter actions. The

“wholesalers” are the recruiters, transporters, and traffickers who harvest and move people into the trafficking streams. Disruption of the wholesale chain also increases costs to the “consumer”. Doing so, however, requires international cooperation and resources. It also requires addressing the attributes the wholesaler looks for in the trafficked person. While reducing the physical health (an attribute sought by wholesalers) of trafficked people would not be acceptable, reducing their gullibility would (though this is a preventative against trafficking, rather than a measure that reduces demand). This is the aim of public education and awareness campaigns in origin countries. A much greater challenge would be reducing the malleability that follows from economic deprivation and the lack of opportunity. Throughout the developing world, economic change has pushed large numbers of people into extreme social and economic vulnerability. In the developed world, there is a continuing demand for cheap, low-paid workers. At a very basic level, the barriers that exist between the locations of supply of workers and demand for workers will tend to reward those who work out ways to overcome those barriers. This is simplistic, of course, and does not touch the deeper underlying themes of the extreme inequalities in wealth between countries. Addressing those inequalities is not yet an aim of the Northern destination countries which has received any significant allocation of resources

In addition, there are a number of structural and legal measures that can be taken to reduce demand. One is to increase the availability of legal possibilities for people to emigrate for work. Such legal opportunities mean that potential trafficking victims are less likely to rely on traffickers who provide false documents, arrange travel, and find them work abroad. This lessens demand in the destination country for illegally

supplied labor by forcing it to compete with legally supplied labor. Such legal arrangements are possible. For example, a bilateral agreement between Italy and the International Organisation for Migration (IOM) office in Tirana, Albania, provides for the management of labor migration flows from Albania and smoothing the integration of migrant workers into Italy. The agreement allows 5,000 Albanians to work in Italy for one year. The IOM office in Tirana interviews applicants, who undergo testing of job skills. The profiles of would-be migrants are entered in an IOM database that is available to Italian employers for consultation on the Internet. The database also posts job offers in Italy, mainly in six regions where the need for workers is high. By matching their skills to existing vacancies, the database allows applicants to leave Albania with a labor contract, enabling them to start work upon arrival in Italy. When the workers arrive in Italy, the IOM in Rome provides orientation and vocational training courses to some of the newcomers. Since most applicants are men, men have benefited most from this agreement. Clearly, such an agreement reduces demand for illegal labor in some sectors, but not all. The involvement of criminal organizations in prostitution means that exploitation for sexual purposes continues outside any such monitoring of labor flows.

Understanding Arab Culture and Human Rights and the Effect on Law Enforcement.

The theoretical obstacles that prevent a more widespread and assertive force of human rights fall into three categories which are captured in the following three hypotheses:

(i) Human Rights are a Western concept; (ii) cultural objections are exclusively Non-Western; (iii) cultural relativism is the only threat to universality. These arguments against human rights have been repeated across the Arab world for a long time. To

move towards a more sustainable universality of human rights means to work at the nexus of these challenges through academic, political and cultural debates that place Arab culture, identity, and religion *within* the human rights paradigm and not in opposition to it.

Through the international human rights instruments, signed and ratified by many Arab Spring countries, these states endorsed the principle of the universality of human rights, according to which human rights are applied equally and indiscriminately to every person, irrespective of his or her race, sex, religion, ethnic or social origin, language, nationality, age, sexual orientation, disability or any other distinguishing character. Nevertheless, for decades to come, universal norms laid down by these international human rights instruments were diluted or even dismissed outright as inconsistent with Arab cultural, religious beliefs and practice. Within human rights theory, and indeed within popular discourse at large, this is known as cultural relativism. Cultural relativism takes two forms: a strong one that considers culture a principle source of the validity of a right; and a weaker one that initially presumes universality of rights but uses culture as a secondary source to allow some local variations to the scope of rights. In the past, cultural relativism was repeatedly used by Arab states to escape or subvert their human rights commitments derived from these instruments, as well as by religious figures to maintain control over legislation. Human rights were regarded as a western/imperialist invention. This discourse resonated what the famous author Edward Said called the creation of ‘the Orient’ in European and American literature, that distinguished between the West and the rest of the world through perceived geographical and cultural barriers—thereby codifying differences among people.

This has affected the enforcement of human trafficking laws in the MENA region...

Traffickers prey on children and young people to meet the sexual demands of paedophiles and people who pay for sex. There is actually no common profile of perpetrators who sexually exploit children – they may be young, old, married, single; they come from all kinds of socio- economic backgrounds and work in all kinds of professions. There are reports of child sex tourism taking place in the Middle East, including in Syria, which has now become a popular destination for sex tourists from wealthier countries in the Middle East - many of whom are Saudi men. High prices are offered for virgins. There have also been reports of Saudi and other Gulf visitors acquiring youth brides in so called ‘temporary marriages’ in Egypt. Domestic service that is abusive and early forced marriage are other practices that are creating demand for child sex trafficking in the Middle East.

Conclusion

To combat human trafficking in persons from Sub-Sahara Africa to the MENA region, there are questions that needs to be addressed or tackled.

Does a country have specific laws on anti-trafficking that does not only criminalize the act of trafficking but provides trafficked victims with the necessary protection, assistance and care?

Does the government or regional body issue an annual report that examines the scope of the problem and evaluate the appropriate government and non-government responses?

Does a country have a special and effective task force or secretariat that co-ordinates efforts by the various concerned government bodies as well as by elements of civil society?

Does the government or a regional body or countries of origin and destination have a plan to deal with human trafficking?

Does a government or regional body have an understanding and a plan of how to offset cultural and economic complexities sabotaging anti-trafficking laws and efforts?

In dealing with trafficking of Ghanaian migrants in the Middle East, there is a need for a collaborative effort between state of origin; (i.e. Ghana) and states of destinations; (i.e. Arab states) to have a structured approach that has the objective of dealing with the economic forces of demand and Arab culture which hinders anti-trafficking law enforcement efforts. These two socio-economic forces have posed challenges to the enforcement of anti-trafficking laws and the legislation of laws that seek to protect victims of trafficking in the MENA region.

Implementation of this international obligation requires new laws that truly recognize NGOs and other elements of civil society as essential partners in any economic, social, or political development.

Similarly, it is imperative that laws are propounded to afford greater protection to private citizens who report cases of human trafficking. These laws such as the Whistle Blowers Act, 2006 of Ghana; are some of the laws that ensures that measures are intended to protect whistle-blowers from retaliation and vilification. Further, there should be a reward fund for whistle-blowers as an incentive to report human trafficking cases.

Other trafficking-related laws include child protection laws, laws on violence against women, laws that enhance access to justice, laws that guarantee access to information, and labor laws that do not discriminate against foreign labor and provide protection to all forms of labor, including domestic work. Only when human rights are enhanced and fully protected and guaranteed for the people of the Middle East will human trafficking be successfully confronted and eliminated. The next step for these efforts is to move beyond specific anti-trafficking legislation to trafficking-related legislation.